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high above the tumult of battle, and strong in the united sentiments of all who are actuated by justice, which tells the powers of death who are fighting against the powers of life that they can not hope for a victory which would be a disaster for humanity.

The letter from King William of Prussia is a document of no mean importance, and it is because thereof that the portion of M. Pichon's address relating to it has been quoted without comment on the part of the undersigned.

JAMES BROWN SCOTT.

SIR GRAHAM BOWER ON PRIZE LAW CHANGES

An interesting article from the November issue of the *Contemporary Review*, entitled "Capture or Control: A Study in the Development of Sea Law," supplemented by certain private letters from the author to the Editors of this JOURNAL, deserves comment.

The writer of the article, Sir Graham Bower, Retired, Commander R. N., after pointing out the changed conditions of naval war as contrasted with the time of Lord Stowell, argues for a change of rules to correspond.

The changed conditions are:

Merchant ships too big to search at sea, laden with a vast variety of goods and with an equal variety of shippers, enemy and neutral;

Ships of war to visit these merchantmen, ranging from the large cruiser to the submarine, many extremely vulnerable and with no carrying capacity;

A consequent tendency to destroy ships which can not be safely sent in for trial; disregard of the lives of passengers and crew during this process;

A corresponding tendency to arm merchant ships in their own defense;

An enormous expansion in the definition of contraband.

To meet these changed conditions are suggested the following changes:

The destruction of merchant shipping is absolutely prohibited; such ships accordingly may not be armed; a prize which can not be sent to the captor's jurisdiction may be interned in a neutral port; time of search to be limited to two days, with demurrage for overde-

tention; preëmption instead of confiscation for conditional contraband; merchant ships to be clearly and distinctively marked.

The novelties here briefly summarized are that merchant ships shall not be destroyed; that, therefore, they shall not be armed; but that they may be interned in a neutral port during the war. This internment presumably would include their crews.

Let me give the line of thought in the writer's own words addressed to the editors.

I feel strongly that the destruction of merchant ships must be ruled out from the permissible practices of warfare, but I feel that to compel a belligerent to take prizes into port would be to balance the scales unduly in favour of the British Empire, which has ports all over the world. So, in exchange for the abandonment of the exceptional right of destruction, we should, I think, concede the right of asylum, a right common in the treaties of the eighteenth century.

I feel also that there is something, and indeed a great deal, to be said in favour of the argument and proposal contained in Mr. Lansing's confidential letter 18th January, 1916, proposing the abandonment of the right to arm merchant ships.

Human progress — or at all events the advocates of humanity — have hitherto sought human progress in the separation of combatants from noncombatants, and it is impossible to say that a merchant vessel armed to resist visit and search is not a combatant.

So I propose to abandon the right to arm merchant vessels if the right of destruction is abandoned. The proposals, that is, the proposed grant of the right of asylum — and the abandonment of the right to arm merchant vessels — being both of them conditional on the abandonment of the right of destruction.

Sir Graham adds privately the resolutions adopted by the National Sailors' and Firemen's Union, as follows:

That in view of the enormous destruction of property and life at sea, it would be an advantage if in future wars an international law should be established insisting that all merchant ships should be unarmed, and that war vessels should have the right to search merchant ships and escort them to their home ports or to neutral ports to be interned during the progress of the war, and that it should be considered a crime for any war vessel to attack noncombatant merchant ships, and further that it would be an offence against the international law for non-combatant merchant vessels to carry armament of any description.

The sequence of argument in this resolution and in Sir Graham's article is perfectly clear. The destruction of merchant ships is abominable and barbarous. To be immune, however, they must be truly noncombatants and unarmed. Otherwise the U-boat, for instance, which might be sunk by a single shot, is justified in using its safest

weapon, the torpedo. But given this, shall the merchant ship go free if the captor has no unblockaded port to which to send her? Clearly this would give the premier maritime Power an undue advantage. Let the capture be interned in a neutral port, therefore, and you have a fair compromise.

In comment, let me say at the outset that a sharp enough distinction has not been drawn between the neutral and the enemy merchantman. What can ever warrant the destruction of a neutral trader! Under certain circumstances, of unneutral service, violation of blockade, carrying a disproportionate amount of contraband, she can be confiscated, but only after a judicial trial and condemnation, which means that she has been taken *infra praesidia* and has had her day in court. Otherwise you substitute the prejudiced impulse of the searching officer for the responsible finding of the judge.

We all recall our indignation at the Russian judgment in the *Knight Commander* case, where a young officer determined that railway metal and provisions were intended for Japanese military use in Corea, not for Japanese innocent use at home. Unable to send the ship to Vladivostock, he sank her.

It is true that both the United States Naval Code of 1900 and the Declaration of London (neither in force) allow the destruction of a neutral prize under highly exceptional conditions, subject to judicial review and with damages hanging over the captor who errs. And of course the safety of those on board must be insured. But until the present war such destruction was almost unknown. We must clear our minds of German methods and ask whether in normal wars it is reasonable and fair to the neutral to put an end to his existence during the war by internment on suspicion and with no judicial review. For it is inevitable that while his destruction (under normal rules) was highly exceptional, this internment, if legalized, would be abominably frequent. Some excuse could be found for this humane disposal of almost every neutral vessel, while the Declaration of Paris would be a dead letter. There is no fair compromise about this.

On the other hand, destruction of enemy merchant ships, harsh as it is, by present law is permitted. The career of the *Alabama* shows the length to which this can be carried and the effectiveness of the method. To substitute internment for destruction in such case is really a softening and humanizing of war. And since it would make the sacrifice of life unlikely, the price of uselessness for the term of the war is not un-

reasonable. Nevertheless there are difficulties in the way of Sir Graham's program.

The captured ship must be taken in by a prize crew, because she could not be trusted to go without compulsion. Could this prize crew be spared (from a U-boat for instance), and what would become of it in neutral jurisdiction? Is the interned merchant crew to be idle for the term of the war at its government's charges, or may it return to home and work? The plan says nothing as to this. Would the neutral assume such a burden, of policing and feeding and transportation, for the port of internment will be a remote one to avoid recapture? And is not the neutral exposed to trouble without end in playing his new and difficult rôle?

The United States during this war has been in turn neutral and belligerent, with a change of interest and a double point of view. Its experience, therefore, may have value in the discussion of Sir Graham's very real and serious problem. What did it try to insist upon when its neutral ships were sunk by submarines and others? Simply that no matter what the searching ship was, whether cruiser or armed trader or U-boat, it must observe the rules of cruiser warfare. This meant visitation duly carried out, search legally executed, the safety of the personnel honestly provided for. If the ship searching was incapable of all this, so much the worse for it. We would not permit the rules of the game to be changed to suit the new U-boat weapon. And this attitude seems to the writer everlastingly right.

Now Sir Graham's program, whether consciously or not, is based upon belligerent rather than neutral interest and makes changes to suit the submarine, instead of compelling the submarine to keep to its special field if it can not conform to the existing law. Is not this mistaken policy? It is conceivable that the seaplane can be so developed as to stop ships under threat of bombing. Must the rules of prize law be still further altered to favor the airplane or the Zeppelin? Are we not on safer ground if we say that the old rules shall govern and their violation be punished?

With other of Sir Graham's suggested changes I am more in sympathy.

Thus, a circumscribed detention at a belligerent port for purposes of search is not unreasonable, always provided that the enforced presence of the ship in a belligerent port gives no other rights over her than would be admitted on the high seas; that it is merely a matter of convenience.

Preëmption, which has often been tried in the past and was provided for in some of our own early treaties, is a favor to the neutral and not objectionable. It will not, however, cure the tendency to call everything in sight contraband.

And to a seaman's eye, one would think, the marking of trading ships should be unnecessary, but it can do no harm unless it is improperly used.

Is not the real difficulty in the present situation, and in the future as we contemplate it, that the rules we have are not observed? That is why we are at war today, because Germany deliberately chooses to violate our rights at sea. Japan did not do so in the Russian war; we scrupulously observed the rules in our Spanish war; when a wanton calculating offender comes along and breaks all laws, the thing to do is not to change the law, but to punish the one who violates it.

THEODORE S. WOOLSEY.

PROPOSED NEUTRALITY OF FRANCE AT THE BEGINNING OF THE WAR

From time to time statements are made and documents find their way into print which throw light upon, and tend to clear up the situation existing before the outbreak of the war of 1914.

In this category fall the statements made in the month of March by M. Stephen Pichon, French Minister for Foreign Affairs, by M. René Viviani, formerly Prime Minister and French Minister for Foreign Affairs at the outbreak of the war, and of Dr. von Bethmann-Hollweg, the then Imperial German Chancellor.

In an address delivered by M. Pichon at the Sorbonne in Paris, on March 1, he made the following statement, and supported it by the text of a very important document. Thus he said, according to the London *Times*, of March 2, 1918:

The men who were not satisfied with having caused this most appalling war endeavored, on the very day when they made that war inevitable, to dishonor us by dragging us into cowardly complicity in the ambush in which they were leading Europe. I will show that by revealing the document which the German Chancellery, once it had been drafted, kept concealed in its most secret archives. You will soon see why. We have only become acquainted with this document recently. Its authenticity is beyond dispute. It bears the signature of Herr von Bethmann-Hollweg, and is dated July 31, 1914. It is known, notably by the German White Book, that on that day the Imperial Chancellor, in requesting Baron von Schoen to acquaint us with the declaration of a state of danger of war as re-